

NTSB Order No. EA-3799

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of February, 1993

Docket SE-10387

the respondent flying in a Pitts Special S-2B and a Citabria flown by an instructor and a student. The crash resulted in severe injuries to the occupants of the Citabria,² and both aircraft were destroyed when they fell to the ground. The Administrator alleged in his complaint that the respondent violated Federal Aviation Regulations (FAR) 91.67(a) and 91.9, 14 C.F.R. Part 91, in that the respondent failed to maintain vigilance to see, avoid, and give way to the Citabria.³

On the date of the incident, the aircraft were approaching Ramona Airport, Ramona, California, for landing. When the collision occurred, both aircraft were approximately 100 feet from the approach end of Runway 27 and approximately 50 feet above the ground. Respondent's aircraft struck the Citabria from above and behind, just forward of the empennage, severing the

²The respondent was not injured.

³FAR sections 91.67(a) and 91.9 provided, at the time of the incident, as follows:

"§ 91.67(a) Right-of-way rules; except water operations.

(a) *General.* When weather conditions permit, regardless of whether an operation is conducted under Instrument Flight Rules or Visual Flight Rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft in compliance with this section. When a rule of this section gives another aircraft the right of way, he shall give way to that aircraft and may not pass over, under, or ahead of it, unless well clear."

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

tail, and then struck the left wing of the Citabria.

The respondent asserts that the evidence taken at the hearing does not support the finding by the law judge that respondent violated the FARs cited in the complaint.⁴ However, respondent's arguments on appeal merely restate factors he believes the law judge should have found to be exculpatory; they do not reveal any inadequacy in the evidence relied on by the law judge. For example, respondent argues once again that the Citabria may not have made radio calls, and that it made a "straight in" approach, while he, by contrast, followed the recommended procedures for landing at an uncontrolled airport by making regular radio calls and flying the pattern.

Although the record supports the conclusion that the Citabria made a straight-in approach and may not have made radio calls, and that respondent did make radio calls, the uncontroverted testimony⁵ is that respondent failed to fly a base leg, but instead made essentially a continuous turn from downwind to final. By so doing, he reduced his opportunity to see other traffic in the pattern, such as the Citabria that had the right-of-way because it was ahead of him on final approach, and he also reduced his opportunity to be seen.

We agree with the law judge that the Citabria's use of a straight-in approach and possible failure to use the radio did

⁴The Administrator has filed a reply brief opposing the appeal.

⁵Respondent did not appear at the hearing, but was represented by counsel.

not relieve the respondent of his obligation to exercise vigilance to see and avoid other traffic; and, by unnecessarily flying a pattern that reduced his opportunity to see and be seen, the respondent did not exercise the vigilance that the regulations require.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the Administrator's order are affirmed;
3. The 180-day suspension of respondent's private pilot certificate shall begin 30 days from the date of service of this order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).